

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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ERNESTO DARQUEA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	Civil Action No. 05-10438 MLW
VIISAGE TECHNOLOGY, INC., BERNARD C.	)	
BAILEY, WILLIAM K. AULET, and DENIS K.	)	
BERUBE,	)	
	)	
Defendants.	)	

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Case Captions Continued On The Following Page

**DEFENDANTS' RESPONSE TO MOTIONS FOR CONSOLIDATION,  
APPOINTMENT OF LEAD PLAINTIFF,  
AND APPROVAL OF LEAD COUNSEL**

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GERALD D. BRODER,

Plaintiff,

v.

VIISAGE TECHNOLOGY, INC., BERNARD C.  
BAILEY, WILLIAM K. AULET, and DENIS K.  
BERUBE,

Defendants.

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Civil Action No. 05-10475 MLW

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WAYNE CLARK, Individually and on Behalf of  
All Others Similarly Situated,

Plaintiff,

v.

VIISAGE TECHNOLOGY, INC., BERNARD C.  
BAILEY, WILLIAM K. AULET, and DENIS K.  
BERUBE,

Defendants.

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Civil Action No. 05-10578 MLW

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JOSEPH MARTIN, On Behalf of Himself and All  
Others Similarly Situated,

Plaintiff,

v.

VIISAGE TECHNOLOGY, INC., BERNARD C.  
BAILEY, WILLIAM K. AULET, and DENIS K.  
BERUBE,

Defendants.

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Civil Action No. 05-10577 MLW

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JOHN FLYNN, On Behalf of Himself and All )  
Others Similarly Situated, )

Plaintiff, )

v. )

Civil Action No. 05-10498 MLW

VIISAGE TECHNOLOGY, INC., BERNARD C. )  
BAILEY, WILLIAM K. AULET, DENIS K. )  
BERUBE, BUDDY G. BECK, MARCEL YON, )  
THOMAS J. REILLY and CHARLES E. LEVINE, )

Defendants. )

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MIN CHANG, Individually, and On Behalf of All )  
Others Similarly Situated, )

Plaintiff, )

v. )

Civil Action No. 05-10537 MLW

VIISAGE TECHNOLOGY, INC., BERNARD C. )  
BAILEY, WILLIAM K. AULET, DENIS K. )  
BERUBE, BUDDY G. BECK, MARCEL YON, )  
THOMAS J. REILLY and CHARLES E. LEVINE, )

Defendants. )

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TURNBERRY ASSET MANAGEMENT, On )  
Behalf of Itself and All Others Similarly Situated, )

Plaintiff, )

v. )

Civil Action No. 05-10725 MLW

VIISAGE TECHNOLOGY, INC., BERNARD C. )  
BAILEY, WILLIAM K. AULET, DENIS K. )  
BERUBE, BUDDY G. BECK, MARCEL YON, )  
THOMAS J. REILLY, CHARLES E. LEVINE, )  
HARRIET MOUCHLY-WEISS, PAUL T. )  
PRINCIPATO, and PETER NESSEN, )

Defendants. )

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DAPENG LUO, )

Plaintiff, )

v. )

Civil Action No. 05-10617 MLW

VIISAGE TECHNOLOGY, INC., BERNARD C. )  
BAILEY, WILLIAM K. AULET, DENIS K. )  
BERUBE, BUDDY G. BECK, MARCEL YON, )  
THOMAS J. REILLY and CHARLES E. LEVINE, )

Defendants. )

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OLYMPIA LEVINSON STIEGELE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	Civil Action No. 05-10677 MLW
BERNARD C. BAILEY, PAUL T. PRINCIPATO,	)	
PETER NESSEN, THOMAS J. REILLY, B.G.	)	
BECK, CHARLES E. LEVINE, WILLIAM K.	)	
AULET, and DENIS K. BERUBE,	)	
	)	
Defendants.	)	
	)	
and	)	
	)	
VIISAGE TECHNOLOGY, INC.,	)	
	)	
Nominal Defendant.	)	

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The defendants in each of the above-captioned cases respectfully submit this response to the motions for consolidation of the putative securities class actions, appointment of lead plaintiffs, and approval of plaintiffs' selection of lead counsel.

Defendants acknowledge that they do not have standing to challenge whether any of the plaintiffs who have moved for appointment as lead plaintiff or lead plaintiff group satisfy the criteria for appointment set forth in Section 21D(a)(3)(B)(iii) of the Securities Exchange Act of 1934, 15 U.S.C.A. §78u-4(a)(3)(B)(iii). *See, Greebel v. FTP Software, Inc.*, 939 F. Supp. 57, 60-61 (D. Mass. 1999); *Takeda v. Turbodyne Technologies, Inc.*, 67 F. Supp.2d 1129, 1138 (C.D. Cal. 1999). Defendants do not oppose consolidation of the putative class actions. Defendants submit this response only to bring to the Court's attention certain points that the Court may consider relevant to the instant motions.

First, with respect to the request for consolidation, the motions identify

*Olympia Levinson Stiegele v. Bernard Bailey, et al.*  
Civil Action No. 1:05-CV-10677 (MLW)

as one of the class actions to be consolidated. The *Stiegele* action, however, does not assert claims on behalf of a class. Rather, Plaintiff in the *Stiegele* action asserts a derivative claim under Fed. R. Civ. P. 23.1. Although the factual allegations in *Stiegele* are, in large measure, identical to those asserted in the class actions, defendants submit that consolidation is inappropriate as the legal issues are distinct. All of the claims asserted in *Stiegele* arise under state law and are nominally asserted on behalf of Viisage Technology, Inc. State law will also govern the question of whether plaintiff was excused from the requirement that she make demand upon Viisage's board before filing claims derivatively.

Additionally, the following putative class actions were never served on any of the defendants:

*Min Chang, individually and On Behalf of All Others Similarly Situated v. Viisage Technology, Inc., Bernard C. Bailey, William K. Aulet, Denis K. Berube, Buddy G. Beck, Marcel Yon, Thomas J. Reilly and Charles E. Levine,*  
United States District Court, District of Mass., Civil Action No. 05-10537 MLW

*Dapen Luo, v. Viisage Technology, Inc., Bernard C. Bailey, William K. Aulet, Denis K. Berube, Buddy G. Beck, Marcel Yon, Thomas J. Reilly and Charles E. Levine,*  
United States District Court, District of Mass., Civil Action No. 05-10617 MLW

With respect to the appointment of a lead plaintiff group, Defendants note that the Turnberry Asset Group has reported to the Court that the other movants for appointment as lead plaintiff have withdrawn their motions. While, as noted above, Defendants do not now have standing to challenge whether members of the Turnberry Asset Group are qualified to be class representatives; this is "without prejudice to the possibility of revisiting that issue in considering a motion for class certification." *Greebel*, 939 F. Supp. at 60. Defendants note that the

Turnberry Asset Group's motion for appointment as lead plaintiff discloses that its two members who allege the most substantial loss as a result of the purchase of Viisage common stock during the class period appear to be day traders, and it is therefore possible that there may be unique defenses that apply to them. (Turnberry Asset Management had 7 purchases and sales in the first three reported days of trading in Viisage stock; while Electronic Trading Group, LLC had 84 purchases and sales in its first two reported trading days).

Respectfully submitted,

VIISAGE TECHNOLOGY, INC., ET AL.

By their attorneys,

/s/ Mitchell H. Kaplan

Mitchell H. Kaplan, P.C. (BBO #258940)

**CHOATE, HALL & STEWART**

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Dated: May 23, 2005